

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HERBERT BLAKENEY )  
Plaintiff, ) Civil Action No. 08 - 1384  
v. ) District Judge Gary L. Lancaster  
EDWARD MARSICO, D.A.; RICHARD A. )  
LEWIS, *Judge*; DAVID DONALDSON, *Esq.*, )  
Defendants. )

**MEMORANDUM ORDER**

The above captioned case was initiated by the filing of a Motion to Proceed *In Forma Pauperis* (doc. no. 1) on October 2, 2008, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

Magistrate Judge Lisa Pupo Lenihan filed a Report and Recommendation on November 13, 2008 (doc. no. 11), recommending that Plaintiff's Amended Complaint be dismissed in accordance with the Prison Litigation Reform Act, 28 U.S.C. § 1915(e)(2)(B)(ii) and/or 28 U.S.C. § 1915A for failure to state a claim upon which relief can be granted under 42 U.S.C. § 1983. Plaintiff filed Objections to the Report and Recommendation on December 24, 2008 (doc. no. 14) and an "Appendix" on December 29, 2008 (doc. no. 15). Plaintiff's objections do not undermine the recommendation of the Magistrate Judge.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, and the Objections thereto, the following order is entered:

**AND NOW**, this 2<sup>nd</sup> day of December, 2008;

**IT IS HEREBY ORDERED** that Plaintiff's Amended Complaint is **DISMISSED** in accordance with the Prison Litigation Reform Act, 28 U.S.C. § 1915(e)(2)(B)(ii) and/or 28 U.S.C. § 1915A for failure to state a claim upon which relief can be granted under 42 U.S.C. § 1983.

**IT IS FURTHER ORDERED** that the Report and Recommendation (doc. no. 11) of Magistrate Judge Lenihan dated November 13, 2008, is **ADOPTED** as the Opinion of the Court.

**IT IS FURTHER ORDERED** that the Clerk of Court mark this case **CLOSED**.

**AND IT IS FURTHER ORDERED** that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

By the Court:  
  
\_\_\_\_\_  
Gary L. Lancaster  
United States District Judge

cc: Lisa Pupo Lenihan  
United States Magistrate Judge

Herbert Blakeney  
FB5713  
SCI Greene  
175 Progress Dr.  
Waynesburg, PA 15370